

(d) *Time for filing returns and paying tax.* Except as provided in § 25.164a the brewer shall file the semimonthly tax return, Form 5000.24, for each return period, and make remittance as required by this section, not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by § 25.164a(c).

(e) *Timely filing.* (1) When the brewer sends the semimonthly tax return, Form 5000.24, by U.S. mail, in accordance with the instructions on the form, as required by this section, with remittance as provided for in this section, or without remittance as provided for in § 25.165, the date of the official postmark of the United States Postal Service stamped on the cover in which the return and remittance were mailed is considered the date of delivery of the return and the date of delivery of the remittance, if enclosed with the return. When the postmark on the cover is illegible, the burden is on the brewer to prove when the postmark was made.

(2) When the brewer sends the semimonthly return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail be treated as the date of delivery of the semimonthly return and of the remittance, if enclosed with the return.

(Approved by the Office of Management and Budget under control number 1512-0467)

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-246, 52 FR 668, Jan. 8, 1987; T.D. ATF-251, 52 FR 19314, May 22, 1987, T.D. ATF-365, 60 FR 33669, June 28, 1995]

**§ 25.164a Special rule for taxes due for the month of September (effective after December 31, 1994).**

(a)(1) Except as provided in paragraph (a)(2) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The brewer

shall file a return on Form 5000.24, and make remittance, for the period September 16-26, no later than September 29. The brewer shall file a return on Form 5000.24, and make remittance, for the period September 27-30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 25.165, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The brewer shall file a return on Form 5000.24, and make remittance, for the period September 16-25, no later than September 28. The brewer shall file a return on Form 5000.24, and make remittance, for the period September 26-30, no later than October 14.

(b) *Amount of payment: Safe harbor rule.* (1) Taxpayers are considered to have met the requirements of paragraph (a)(1) of this section, if the amount paid no later than September 29 is not less than  $\frac{11}{15}$  (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(2) Taxpayers are considered to have met the requirements of paragraph (a)(2) of this section, if the amount paid no later than September 28 is not less than  $\frac{2}{3}$  (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(c) *Last day for payment.* If the required due date for taxpayment for the periods September 16-25 or September 16-26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(d) *Example. Payment of tax for the month of September—(1) Facts.* X, a brewer required to pay taxes by electronic fund transfer, incurred tax liability in the amount of \$30,000 for the

first semimonthly period of September. For the period September 16-26, X incurred tax liability in the amount of \$45,000, and for the period September 27-30, X incurred tax liability in the amount of \$2,000.

(2) *Payment requirement.* X's payment of tax in the amount of \$30,000 for the first semimonthly period of September is due no later than September 29 (§ 25.164(d)). X's payment of tax for the period September 16-26 is also due no later than September 29 (§ 25.164a(a)(1)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16-26 (§ 25.164a(b)). Under the safe harbor rule, X's payment of tax must equal \$21,990.00, <sup>11</sup>/<sub>15</sub>ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of \$2,000 for the period September 27-30 must be paid no later than October 14 (§ 25.164a(a)(1)). X must also pay the underpayment of tax, \$23,010.00, for the period September 16-26, no later than October 14 (§ 25.164a(b)).

[T.D. ATF-365, 60 FR 33669, June 28, 1995]

**§ 25.165 Payment of tax by electronic fund transfer.**

(a) *Eligible brewers.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and parts 26 and 27 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of beer taxes during the succeeding calendar year. Payment of beer taxes by cash, check, or money order, as described in § 25.163, is not authorized for a taxpayer who is required by this section to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable removals, determined in accordance with § 25.159, and importations (including beer brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments

are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place it appears in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of determining who is required to make remittances by EFT.

(3) A taxpayer who is required by this section to make remittances by EFT shall make a separate EFT remittance and file a separate return, Form 5000.24, for each brewery from which beer is removed upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and parts 26 and 27 of this chapter, during the previous calendar year, shall notify, in writing the appropriate ATF officer. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in §§ 25.164 or 25.175. The request shall take into account any time limit established by the bank.